

IN THE MATTER OF LICENSE NO. R-27212
MERCHANT MARINER'S DOCUMENTS Z-578889-D5
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: DONALD R. QUIGLEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1888

DONALD R. QUIGLEY

This appeal been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 28 May 1971, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for six months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Radio Operator on board SS JAMES McKAY under authority of the document and license above captioned, on or about 13 January 1971, Appellant:

wrongfully remained absent form his duties and vessel over leave while said vessel was in the foreign port of Durban, South Africa, thereby delaying the sailing of the vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the shipping articles and log book of JAMES McKAY.

In defense, Appellant offered in evidence testimony of Appellant, a letter from Appellant to Master authorizing deduction form wages, and Lykes Brothers Steamship Co. form 948, "Record of Official Log Book Entry."

At the end of the hearing, The Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of six months on eighteen months' probation.

The entire decision was served on 7 June 1971. Appeal was

timely filed on 24 June 1971. A brief in support of Appellant's appeal was filed 17 September 1971. Although Appellant had until 12 October 1971 to add further to his appeal he has not done so.

FINDINGS OF FACT

ON 13 January 1971, Appellant was serving as a Radio Operator on board SS JAMES McKAY and acting under authority of his license and document while the ship was in the port of Durban, South Africa.

Sailing time for JAMES McKAY was posted as 2200 on 13 January 1971. Appellant did not report on board the vessel until 2302 and was logged by the master for expenses caused by the one hour delay. By letter dated 2 March 1971 Appellant authorized the master to deduct from Appellant's wages the expense caused Lykes Brothers by the delay in the ship's sailing time.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. The facts do not show that Appellant "wrongfully" remained absent from the vessel,
2. The evidence does not support the Administrative Law Judge's findings of fact.

APPEARANCE: Mandell and Wright, Houston, Texas
by, Arthur Mandell, Esquire

OPINION

I

Appellant contends that the evidence does not support the Administrative Law Judge's findings of fact. The Administrative Law Judge, as the trier of facts, is the judge of credibility and the assigner of weight to evidence. Therefore, his findings cannot be against the weight of evidence and will not be disturbed if it appears that the findings are not supported by substantial evidence.

II

The Administrative Law Judge is free to accept the testimony of a witness as true, untrue, or accurate as to one point and untrue as to another. In this case he chose to reject

substantially all of Appellant's testimony. However, mere rejection of the testimony of a witness does not establish the opposite. There must be reliable and probative evidence to support the Administrative Law Judge's findings. The log entry of JAMES McKAY dated 14 January 1971 was made in substantial compliance with 46 U.S.C. 702. Therefore, the log entry is prima facie evidence of the facts recited therein and constitutes substantial and probative evidence to support the findings.

III

Appellant contends that the facts fail to show that Appellant "wrongfully" remained absent from the vessel. Failure of a seaman to be on board a vessel at the posted sailing time is presumptively wrongful. It is not necessary for the Investigating Officer to allege or prove that the absence was done with a "wrongful" intent. The log entry of JAMES McKAY constitutes prima facie evidence of a violation of this duty. The testimony offered by Appellant in explanation of his absence was rejected.

CONCLUSION

The charge and specification were proved by substantial, reliable and probative evidence and must be affirmed. However, the Administrative Law Judge's order of eighteen months' probation is excessive under the circumstances and is modified to six months suspension of Appellant's license and Merchant Marine Document conditioned on twelve months' probation.

ORDER

The order of the Administrative Law Judge at Houston, Texas, on 28 May 1971, is modified to provide for six months' suspension on twelve months' probation.

The order is AFFIRMED as MODIFIED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of September 1972.

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